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February 15, 2011

**BY ECF**

Honorable Roanne L. Mann  
United States Magistrate Judge  
Eastern District of New York  
United States Courthouse  
225 Cadman Plaza East  
Brooklyn, New York 11201

Application granted, on  
consent. In addition,  
counsel shall promptly  
arrange for the prepara-  
tion processing & execution  
of the referenced  
authorization.

Re: Courtney Alston v. City of New York, et al., 11-CV-340 (JBW)(RLM)

Your Honor:

*Roanne L. Mann*  
U.S. Magistrate Judge  
Dated 02/16/11

I am an Assistant Corporation Counsel in the Office of Michael A. Cardozo, Corporation Counsel of the City of New York, representing defendant City of New York ("City") in the above-referenced matter, in which plaintiff alleges, *inter alia*, that he was falsely arrested and maliciously prosecuted. Defendant City writes to respectfully request an enlargement of time to answer or otherwise respond to plaintiff's complaint from February 18, 2011 until April 19, 2011. Plaintiff's counsel, Christopher Wright, Esq., consents to this request.

In addition to the City, plaintiff also names Undercover #0089, Police Officer Sardina and Sergeant Doherty as defendants in this action.<sup>1</sup> According to the civil docket sheet, individually named defendants Undercover #0089 and Police Officer Sardina appear to have been served with process. This office has not discussed with these defendants the manner of service and we make no representation herein as to the adequacy of service upon them. A decision concerning this office's representation of these defendants has not yet been made, accordingly, this request for an enlargement of time is not made on their behalf. However, given the time involved in determining the representation of police officers, and in the interest of

<sup>1</sup> Upon information and belief, individually named defendant Doherty is retired. This sixty day enlargement should allow this office to provide plaintiff's counsel with an address to effectuate service upon defendant Doherty.

judicial economy, we would hope that the court may, *sua sponte*, extend the time to answer on behalf of all defendants until April 19, 2011.

The enlargement until April 19, 2011 will allow this office time to conduct an inquiry to determine whether it can represent the individually named defendants in this action. See General Municipal Law § 50(k); Mercurio v. The City of New York, et al., 758 F.2d 862, 864-65 (2d Cir. 1985); Williams v. City of New York, et al., 64 N.Y.2d 800, 486 N.Y.S.2d 918 (1985) (decision whether to represent individual defendants is made by the Corporation Counsel as set forth in state law). The defendant officers must then decide whether they wish to be represented by the Corporation Counsel. See Dunton v. County of Suffolk, 729 F.2d 903 (2d Cir. 1984). Only then can this office interview them for the purposes of responding to the complaint.

Additionally, in his complaint, plaintiff alleges, *inter alia*, that he was falsely arrested and maliciously prosecuted. In order to respond to plaintiff's allegations, we need to obtain the underlying police and criminal court records. It is our understanding that these records may be sealed pursuant New York Criminal Procedure Law § 160.50, and this office is in the process of forwarding for plaintiff's execution consent authorizations to access these records.

No previous request for an enlargement of time has been made in this matter. Accordingly, this office respectfully requests that Your Honor grant defendants an enlargement of time until April 19, 2011 to answer or otherwise respond to plaintiff's complaint.

Thank you for your consideration herein.

Respectfully submitted,

/s/

Matthew J. Modafferi  
Assistant Corporation Counsel  
Special Federal Litigation Division

cc: Christopher Wright, Esq. (By ECF)  
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